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Letter dated 16 June 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from Monaco submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 16 June 2006 from the Permanent Representative of Monaco to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: French]

I have the honour to transmit herewith the draft [fifth] report of the Principality of Monaco to the Counter-Terrorism Committee (see enclosure).

(*Signed*) Gilles **Noghès**

Enclosure

Principality of Monaco

Fifth report submitted by the Principality of Monaco to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

The Security Council,

...

Acting under Chapter VII of the Charter of the United Nations,

...

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution.

Note: This report has been prepared in accordance with the guidance for submission of reports contained in document S/AC.40/OC.11 of the Counter-Terrorism Committee. The fourth report was submitted on 30 April 2004.

Principality of Monaco (1 May 2006)

1. Implementation measures

1.1: The Committee is aware that several pieces of legislation relevant to Monaco's counter-terrorism efforts were in commission at the time of Monaco's last report, including the drafting of a new Code of Criminal Procedure. The Committee would be grateful for an update on the enactment of the new provisions, a progress report on implementation and, where appropriate, copies of the new laws.

The draft new Code of Criminal Procedure was amended to reflect, on the one hand, the requirements of the international conventions to which the Principality of Monaco is a party and, on the other hand, the evolution in thinking about the suppression of acts now deemed criminal or unlawful. The new Code is expected to be submitted shortly to the National Council for review and adoption.

1.2: In paragraph 1 (c) of resolution 1373 (2001), the Security Council decides, inter alia, that all States shall freeze without delay funds and other assets of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts, and of entities owned or controlled by such persons. The Committee would appreciate a brief update on the situation regarding the freezing of assets of terrorist suspects. Have terrorist assets been frozen in Monaco since submission of the latest report and, if so, what has been the outcome of any related investigation?

The procedures for freezing of funds are set out in article 4 of Sovereign Ordinance No. 15,321 of 8 April 2002, which provides that persons or entities subject to such procedures shall be required to submit to the Director of the Budget and Treasury Department any information required to ensure compliance with the provisions of the Sovereign Ordinance.

To date, the Director of the Budget and Treasury Department has received no reports of freezing of funds by any person or entity subject to the provisions of the Sovereign Ordinance.

As for the Financial Network Information Service (SICCFIN), it received no reports of suspected financing for terrorism during 2005.

1.3: In paragraph 1 (d) of resolution 1373 (2001), the Security Council decides that States shall ensure that funds are not made available for the benefit of persons who commit, attempt to commit, facilitate or participate in the commission of terrorist acts. Charities may be particularly vulnerable to abuse by those wishing to collect funds in support of terrorism or to divert funds contributed for legitimate purposes to terrorist organizations. In that regard, the Committee would be grateful for a progress report on the enactment of the Bill on Associations and Federations, which was registered by the secretariat of the National Council on 22 February 2002 and was scheduled for adoption at the time of submission of Monaco's most recent report. The Committee would be interested to hear how the legislation will affect Monaco's statutory and regulatory framework governing the activities of charitable organizations and to learn of any other relevant details to which Monaco might like to draw the Committee's attention. The Committee understands from Monaco's third report (p. 4) that under the new legislation, associations and federations will not be obliged to register with the Government but that non-certified associations may not, under penalty of liquidation, "engage in activities that might give rise to problems with a foreign Government". In this regard, further information on the oversight of unregistered organizations would be appreciated.

For example, the Committee appreciates that Monaco will have considerable financial oversight of certified associations, but it would like to learn about any measures taken to ensure that the funds or assets that non-certified organizations collect are not diverted to support terrorist activities or organizations. In order to determine the risk that such organizations may or may not pose, the Committee would also appreciate an estimate of the size and structure of the charities sector in Monaco, including whether it has any self-regulatory mechanism.

A draft law amending the current law on associations and federations has been prepared with a view to bringing its provisions into conformity with the international conventions to which Monaco is a party, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe. Another draft law will provide for financial oversight of persons and private entities receiving State subsidies. These laws should be adopted soon.

1.4. Further also to paragraph 2 (c) of resolution 1373 (2001), the Committee would appreciate further information concerning Monaco's criminalization of all forms of support for terrorists. It appears from Monaco's second report (p. 14) that there are no specific measures applicable to terrorist recruitment other than those that apply to an "association of wrongdoers". Similarly, with regard to the supply of weapons, it appears that only general criminal legislation relating to the unlicensed use of firearms applies. Moreover, on page 4 of its report to the Security Council Committee established pursuant to resolution 1267 (1999), dated 28 August 2003, Monaco notes that 'any person assisting those committing a crime against the public peace as defined above by providing them with equipment, means of communication, lodgings or meeting places is subject to five to ten years' imprisonment"; the Committee infers that this would apply to persons who support terrorists but that Monaco does not have legislation that specifically and concretely criminalizes any kind of support for terrorist acts. However, Monaco's third report (pp. 4-5) mentions Sovereign Ordinance No. 15,655 of 7 February 2003, which makes the crimes listed in the counter-terrorism treaties to which the Sovereign Ordinance refers punishable in Monaco as terrorist acts. In light of these various reports, the Committee seeks further clarification and would be grateful to receive from Monaco an overview of the criminal legislation that applies to any kind of support for terrorist acts.

At present, there are no specific measures in the Criminal Code applicable to terrorist recruitment other than those that apply to an "association of wrongdoers", nor are there any specific provisions criminalizing any form of support for acts of terrorism, notably the supply of weapons.

Nevertheless, as stated in a previous report, the Sovereign Ordinance of 7 February 2003 establishes that the crimes listed in the counter-terrorism treaties are punishable in Monaco as terrorist acts.

In addition, a draft law to be considered in the near future by the National Council would introduce into domestic law new provisions adding offences to the Criminal Code in order to enhance suppressive measures and adapt them to the fight against terrorism, in which Monaco is committed to playing an active role.

This future law has two main components: first, the proposed provisions defining the new offences classified as terrorist acts (measures against the principal

offence committed by the perpetrator or an accomplice), and second, strengthened measures against existing offences when they are committed in circumstances constituting acts of terrorism.

In other words, so-called "satellite offences" that are specifically linked to terrorism, such as associations of wrongdoers and the supply of support of any kind, including weapons, will now be punishable under Monegasque domestic law.

The principle underlying this law is that when an offence is punishable as a crime, the penalty incurred if the offence is committed in the context of a terrorist act shall be the next higher penalty in the scale established for the offence under the Criminal Code of Monaco.

This draft law, which seeks to amend volume III of the Criminal Code by introducing a new section on terrorism, defines the concept of complicity in relatively broad terms in comparison with the definition normally applied, making it a crime to aid or abet the perpetrator of a terrorist act through the provision of lodging or any other means of support or assistance. It should be noted, however, that the draft law provides for the exemption of spouses and close relatives from prosecution.

The law prescribes a penalty of 5 to 10 years' imprisonment for providing the perpetrator of a terrorist act, as defined by law, or an accomplice in such an act with a place of lodging or refuge, means of subsistence or any other means of evading investigation or arrest.

The law also provides for the inclusion of the offences covered under the Sovereign Ordinance concerning implementation of the various international counter-terrorism treaties, when such offences are committed as described in article 391.1 of the draft law.

1.5: The Committee very much appreciates the information provided concerning Monaco's financial intelligence unit (FIU), the Financial Network Information Service (SICCFIN) and would welcome an update on the suspicious transaction reports (STRs) relating to the financing of terrorism that SICCFIN has received and any cases that have been prosecuted.

See response to question 1.2 above.

2. Implementation of resolution 1624 (2005)

Paragraph 1

2.1: What measures does Monaco have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

The Principality of Monaco signed the International Convention for the Suppression of Terrorist Bombings (United Nations, New York, 15 December 1997) on 25 November 1998, and the Convention entered into force on 6 October 2001. In addition, Monaco signed the International Convention for the Suppression of the Financing of Terrorism (United Nations, New York, 9 December 1999) on 29 October 2001; that Convention entered into force on 10 April 2002.

Apart from those two Conventions, there is currently no specific legislative measure aimed at prohibiting or preventing incitement to commit a terrorist act or acts.

2.2 What measures does Monaco take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

Under the measures for the protection of public order, the Principality of Monaco may bar from its territory any person who poses a risk to national security by ordering the return (*refoulement*) or expulsion of such persons, in accordance with articles 22 and 23 of Sovereign Ordinance No. 3,153 of 19 March 1964 concerning the conditions under which foreign nationals may enter and remain in Monaco.

Paragraph 2

2.3 How does Monaco cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

The territory of the Principality of Monaco is contained within the territory of France. The two States have common borders, Monaco serving also as a point of entry, by sea, into France.

In the light of this distinctive geographic feature, the two States have signed specific bilateral agreements, such as the Convention on good-neighbourliness signed at Paris on 18 May 1963, which governs the conditions under which foreign nationals may enter and remain in Monegasque territory.

This Convention was amended by an exchange of letters between the Governments of France and Monaco, signed at Paris on 15 December 1997.

Certain amendments to the Convention on good-neighbourliness were necessary in order to reflect the agreements concluded by France with other States of the European Economic Area, under which nationals of those States are entitled to take up residence in France without having to request a specific long-stay visa.

These amendments concern the entry, stay and residence of foreign nationals in the Principality of Monaco.

This new arrangement also establishes the formalities applicable to persons arriving in or leaving Monaco, by sea or by air, from or to a point outside the Schengen area. It also gives nationals of Monaco and persons holding a residence permit in Monaco the right to move freely among the States within the Schengen area.

Nevertheless, the amendment of the Convention as a result of France's inclusion in the Schengen area did not result in Monaco's inclusion in that area.

Apart from these amendments, the original stipulations of the Convention on good-neighbourliness of 18 May 1963 in respect of the following matters remain in effect:

- Coordination of police activities between France and Monaco (in particular the right of each State's police to pursue, in the territory of the other State, any person caught *in flagrante delicto* — article 11);
- Return (*refoulement*) and expulsion of persons (article 13);
- Weapons and ammunition (article 16).

Day-to-day police cooperation between France and Monaco also encompasses:

- Access to the CHEOPS (*Circulation hiérarchisée des enregistrements opérationnels de police sécurisés* — Hierarchical network of secure police operational records) database (incorporating the criminal records system (*Système de traitement des infractions constatées* — STIC), the wanted persons system (*Fichier des personnes recherchées* — FPR) and the stolen vehicles system (*Fichier des véhicules volés* — FVV), etc.);
- Access through Interpol France to the fingerprint database (*Fichier automatisé des empreintes digitales* — FAED) and to the DNA database (*Fichier national automatisé des empreintes génétiques* — FNAEG);
- Access to the RAPACE database for counterfeit money, particularly counterfeit euros, and receipt of regular updates;
- Access on request and free of charge to police technical and scientific laboratories;
- Participation in meetings of the Anti-Mafia Coordination and Research Unit (*Unité de coordination et de recherche antimafia* — UCRAM).

Additionally, the Principality of Monaco has been a member of the International Criminal Police Organization (ICPO)-Interpol since 1950 and is closely involved in international police cooperation. As an Interpol member, Monaco has access to an international database containing, inter alia, information on stolen vehicles and on fraudulent travel documents, which enables the country's operational services to detect falsified or stolen identity documents promptly.

In the area of terrorism, Interpol provides the following forms of assistance to its member States:

- Communication of information on terrorist groups and intensified support in identifying presumed terrorists operating in a specific territory;
- Assistance in strengthening the counter-terrorism capabilities of member countries through the provision of training and criminal analysis services;
- Assistance in response to terrorist acts or in investigations, through the provision of support in the areas of analysis and databases;
- Vigorous promotion of the establishment of closer ties between the law enforcement services, customs authorities, intelligence services and armed forces of member countries.

Paragraph 3

2.4: What international efforts is Monaco participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding

among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

The Principality of Monaco has been a Member of the United Nations since 28 May 1993, and it has ratified numerous international conventions, including the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, which entered into force in Monaco on 7 February 1979, and the International Convention on the Elimination of All Forms of Racial Discrimination, which entered into force in Monaco on 28 April 1996.

Monaco has been a member of the Council of Europe since 5 October 2004 and is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Furthermore, Monaco has a strong involvement in humanitarian activities through numerous organizations and associations, and it is providing financing for social and educational development programmes in a number of disadvantaged countries.

2.5: What steps is Monaco taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

Catholicism is the State religion in Monaco, but religious freedom is enshrined in the national Constitution, article 23 of which establishes that freedom of religion and the public practice of religion and freedom of expression in all areas are guaranteed, unless a crime is committed in the exercise of these freedoms. It further establishes that no one may be compelled to take part in any religious acts or ceremonies or to observe religious holidays.

This principle of freedom, however, does not extend to fanaticism or acts of terrorism targeting educational establishments and cultural or religious institutions, and anyone engaging in such acts would be subject to criminal penalties. The Public Security Department of Monaco (i.e., the police force), as part of its intelligence work, maintains active surveillance aimed at preventing such acts.

Paragraph 4

2.6: What is Monaco doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law and humanitarian law?

All the measures taken by the Principality of Monaco to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) are in conformity with international law, in particular human rights law, refugee law and humanitarian law.

These principles of law are enshrined in the Constitution of Monaco, article 2 of which states that the Principality of Monaco is a constitutional hereditary monarchy governed by the rule of law and committed to respect for basic rights and freedoms.

Article 20 of the Constitution provides that penalties may only be established or imposed in accordance with the law and that criminal laws must ensure respect for human personality and dignity. It also states that no one may be subject to cruel,

inhumane or degrading treatment; abolishes the death penalty; and establishes that criminal laws may not be applied retroactively.

3.2: The Committee's Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The Committee would appreciate receiving information from Monaco concerning areas where it might be in a position to provide assistance to other States in relation to the implementation of the resolutions.

It is worth recalling at this point that, to date, the Principality of Monaco has never suffered a terrorist attack on its territory, nor has it identified any freezable funds linked to terrorism. Consequently, the Government of Monaco has no experience comparable to that of major States that have encountered such phenomena.

Nevertheless, the various Monegasque services responsible for combating terrorism and its financing stand ready to provide, according to the means at their disposal, advice and assistance in this area to other countries as follows:

- The Budget and Treasury Department will communicate any useful information in the interest of cooperating on lists of persons and organizations linked to terrorism, drawn up in Monaco in conformity with European regulations, and on any assets that have been frozen in Monegasque establishments pursuant to one of the Sovereign Ordinances on the freezing of funds generated by terrorist activities;

- As explained in more detail in the attached work reports, SICCFIN already has a programme of cooperation with various international bodies such as the International Monetary Fund, the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money-Laundering Measures, the Financial Action Task Force on Money-Laundering (FATF) and the Egmont Group. It is empowered to exchange information with the competent foreign authorities with regard to activities that appear to be linked to drug trafficking or organized criminal activities, or terrorism, terrorist acts or terrorist organizations, or their financing, on condition of reciprocity and provided that no criminal proceedings are already under way in Monaco based on the same facts. Cooperation agreements have already been signed with 21 financial intelligence units in other countries;

- The Judicial Police Division of the Public Security Department of Monaco exchanges information on a regular basis, as described in relation to question 2.3, through the intermediary of ICPO/Interpol and with UCRAM of France, the Federal Bureau of Investigation (FBI) of the United States of America and any other anti-terrorist coordination group that might be interested in information in the Division's possession;

- Lastly, the Monegasque Judicial Services Department provides assistance by executing all international letters rogatory sent to it by foreign judicial institutions, paying special attention to those that relate to combating terrorism and the financing thereof.